

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF TEXAS
MARSHALL DIVISION

TQP DEVELOPMENT LLC * Civil Docket No.
 * 2:11-CV-248
VS. * Marshall, Texas
 *
 * November 25, 2013
NEWEGG, INC. * 4:00 P.M.

TRANSCRIPT OF JURY NOTES AND VERDICT
BEFORE THE HONORABLE JUDGE RODNEY GILSTRAP
UNITED STATES DISTRICT JUDGE

APPEARANCES:

FOR THE PLAINTIFFS: MR. MARC FENSTER
 MR. ALEXANDER GIZA
 MR. ADAM S. HOFFMAN
 MR. BENJAMIN WANG
 MR. PAUL KROEGER
 MR. MICHAEL T. BOARDMAN
 MS. JUDITH L. MEADOW
 Russ August & Kabat
 12424 Wilshire Blvd., Suite 1200
 Los Angeles, CA 90025

 MR. ANDREW SPANGLER
 Spangler Law Firm
 202 N. Green Street, Suite 300
 Longview, TX 75601

APPEARANCES CONTINUED ON NEXT PAGE:

COURT REPORTER: MS. SHELLY HOLMES, CSR
 Official Court Reporter
 100 East Houston, Suite 125
 Marshall, TX 75670
 903/935-3868

(Proceedings recorded by mechanical stenography,
transcript produced on CAT system.)

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES CONTINUED:

FOR THE DEFENDANT: MR. ALAN D. ALBRIGHT
Bracewell & Giuliani, LLP
111 Congress Avenue, Suite 2300
Austin, TX 78701

MR. ANTHONY W. BROOKS
MR. KENT E. BALDAUF, JR.
MR. DANIEL H. BREAN
MR. JAMES L. BOSCO, JR.
The Webb Law Firm
One Gateway Center, Suite 1200
420 Ft. Duquesne Blvd.
Pittsburgh, PA 15222

MR. EDWARD R. REINES
Weil, Gotshal & Manges
201 Redwood Shores Pkwy
Redwood City, CA 94065

P R O C E E D I N G S

(Jury out.)

COURT SECURITY OFFICER: All rise.

THE COURT: Be seated, please.

All right. The Court's received a note
from the jury. I'll read it, and then I'll hand it to
the courtroom deputy to be made a part of the record in
this case.

The note reads as follows: Can we have
the chart showing Claim 1 of the '730 patent? Signed
Randall Pennington, jury foreperson.

And I'll hand the note to Ms. Lockhart.

1 Counsel, here is what I've proposed to
2 send back as a response to the jury regarding that
3 question. I'll read it to you, and then I'll ask for
4 any comments from both parties.

5 Members of the Jury, in response to your
6 question asking to be sent, quote, the chart showing
7 Claim 1 of the '730 patent, close quote, please be
8 advised that this chart was a demonstrative or jury aid
9 and was not an admitted exhibit in this case. As such,
10 it is not evidence and I cannot send it to you.

11 However, your juror notebooks contain a
12 complete copy of the '730 patent with the numbered
13 claims shown at the end of the patent including Claim 1.

14 Anybody have any objection to that
15 response?

16 MR. REINES: No objection, Your Honor.

17 MR. FENSTER: No objection, Your Honor.

18 THE COURT: All right. Then I'll sign
19 it, and I'll give the response to Mr. McAteer and direct
20 that he return it to the jury.

21 And we remain in recess awaiting either
22 another note or a verdict.

23 Court's in recess.

24 COURT SECURITY OFFICER: All rise.

25 (Recess.)

1 COURT SECURITY OFFICER: All rise.

2 THE COURT: Be seated, please.

3 We have a note from the jury that says:

4 We have reached a verdict. Signed by Randall

5 Pennington, foreperson.

6 I'll hand this note to the courtroom

7 deputy.

8 And, Mr. McAteer, bring in the jury,

9 please.

10 COURT SECURITY OFFICER: Yes, sir.

11 All rise for the jury.

12 (Jury in.)

13 THE COURT: Be seated, Ladies and

14 Gentlemen.

15 Mr. Pennington, I understand you're the

16 foreperson of the jury; is that correct?

17 THE FOREPERSON: Yes, sir.

18 THE COURT: Has the jury reached a

19 verdict?

20 THE FOREPERSON: Yes, sir.

21 THE COURT: In that case, will you hand

22 the completed verdict form to the Court Security Officer

23 who will bring it to me.

24 Ladies and Gentlemen, I'm going to

25 announce the verdict at this time, and I'd like to ask

1 each member of the jury to listen very carefully because
2 once I've done that, I'm going to ask you if this is
3 your verdict so that we can confirm that it is, in fact,
4 unanimous.

5 Turning to the completed verdict form, I
6 first note on the last page it is signed and dated
7 today, signed by Mr. Pennington as the foreperson.

8 Turning to the first page of the verdict
9 form, Question 1: Did TQP prove by a preponderance of
10 the evidence that Newegg directly infringed any of the
11 asserted claims?

12 Then for Claims 1, 6, 8 and 9, the answer
13 is yes.

14 Question 2: Did TQP prove by a
15 preponderance of the evidence that Newegg induced its
16 customers to infringe any of the asserted claims of the
17 '730 patent?

18 For Claims 1, 6, 8, and 9, the answer is
19 yes.

20 Question 3: Did Newegg prove by clear
21 and convincing evidence that any of the following claims
22 of the '730 patent are invalid?

23 For Claims 1, 6, 8, and 9, the answer is
24 no.

25 Question 4: What sum of money if now

1 paid in cash do you find from a preponderance of the
2 evidence would fairly and reasonably compensate TQP for
3 its damages resulting from Newegg's infringement of the
4 '730 patent?

5 The answer is \$2,300,000.00.

6 Again, the form -- the verdict form is
7 signed by Mr. Pennington as foreperson and dated with
8 today's date.

9 Now, Ladies and Gentlemen, let me poll
10 you to make sure that the verdict I've just read is your
11 unanimous verdict. If this is your verdict as you've
12 heard me read it, would you stand at this time?

13 (Jury stands.)

14 THE COURT: Thank you. Be seated.

15 Please let the record reflect that when
16 asked, all eight members of the jury immediately rose
17 and stood in response to the question if this was their
18 unanimous verdict.

19 Ladies and Gentlemen, this now completes
20 the trial of this case. From the very beginning, I
21 instructed you about not discussing the case with anyone
22 and then when you retired to deliberate only then
23 discussing it among yourselves. I'm now releasing you
24 from those objections. You are free to talk about the
25 case with anyone of your choosing, and by the same

1 token, you are also free not to discuss the case with
2 anyone. Whether you do or you don't, it is strictly up
3 to you.

4 One thing I do need to make clear to you,
5 the practice and custom in this court is that attorneys
6 in the case cannot approach you about discussing your
7 service as a juror. If you wish to discuss your service
8 with anyone of the lawyers in this case, I can assure
9 you they'll be interested to talk with you, but you will
10 have to initiate those conversations. They are not
11 permitted to initiate a conversation with you.

12 By the same token, if your preference
13 would be not to discuss the case, then you should simply
14 walk right by any or all of the lawyers that you come in
15 contact with because it's your option whether to discuss
16 the case or not and they do not have the prerogative to
17 initiate a conversation with you about it. So I want
18 you to understand the rules of the Court and how our
19 practice is in that regard.

20 Also, Ladies and Gentlemen, I want to let
21 you know each and every one of you how very much the
22 Court values and appreciates your service in this case.

23 This is an important case. And you have
24 served with sincerity and genuineness. I have watched
25 you carefully over the last week, and you have paid

1 amazing attention to a great many details and facts and
2 things. I want to commend you on your service. You
3 have served in the best tradition of our American jurors
4 in jury trials such as this.

5 And as I told you at the beginning of
6 this case, jury service is one of the highest forms of
7 public service any American can perform for their
8 country, and you've done that exceptionally well. In a
9 very real way, you should know that you have helped
10 preserve, protect, and defend our Constitution, our Bill
11 of Rights, the 7th Amendment as a part thereof by being
12 here and doing what you've done. It is no small thing.
13 It is no small thing, indeed, and you should know that
14 and take a certain amount of pride and gratification in
15 that.

16 We all -- I think I can speak for
17 everyone in the courtroom. We all feel that way, and we
18 appreciate what you've done, and we realize without that
19 commitment and service on your part, none of what we are
20 here for would -- would happen.

21 Also, I want to mention one other thing
22 to you, it's my practice since I've been on the bench
23 after a verdict has been received and the jury has been
24 released and discharged to request that before you leave
25 the courthouse, you give me just three or four minutes

1 in the jury room when I can come back and shake your
2 hands personally and thank you face-to-face for your
3 service.

4 I have a letter of appreciation for each
5 of you, and I also have a certificate from the Court
6 memorializing your service as jurors in this case. I'd
7 like to give that to you. You're certainly not
8 obligated to do that. I know it's been a long trial,
9 it's been a long day today, but if you feel that you
10 can't do that, you are released and you're certainly
11 free to leave, but if you give me just a few minutes, I
12 would request that you let me come back and thank you in
13 person for your service.

14 With that, you are discharged from your
15 service as jurors. The verdict has been received and is
16 accepted by the Court, and this case is at an end.

17 Thank you, Ladies and Gentlemen.

18 COURT SECURITY OFFICER: All rise.

19 (Jury out.)

20 THE COURT: For the record, I'll deliver
21 the original signed verdict form to the courtroom deputy
22 who will make it a part of the file in this case.

23 Ladies and gentlemen, that completes the
24 trial of this case. Thank you for your attention and
25 your participation. You are excused.

1 COURT SECURITY OFFICER: All rise.

2 (Court adjourned.)

3 *****

11 CERTIFICATION

13 I HEREBY CERTIFY that the foregoing is a
14 true and correct transcript from the stenographic notes

18 /s/_____
19 SHELLY HOLMES, CSR
Deputy Official Court Reporter
State of Texas No.: 7804
20 Expiration Date 12/31/12

Date